Supreme Court, U.S.
FILED
041443 APR 1 - 2005
OFFICE OF THE CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

GUADALUPE MADRID
Petitioner

v.

ALBERTO GONZALES ATTORNEY GENERAL
Respondent

On Petition for A Writ Of Certiorari
To The United States Court of Appeals
For The Ninth Circuit

USCA NO.: 02-72740
Agency No.: A74 800 385

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

A. DID THE NINTH CIRCUIT COURT OF APPEAL ERR IN DENYING PETITIONER'S PETITION FOR REVIEW

LIST OF PARTIES

The party in this case is the United States Immigration and Naturalization Service.

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IN THE SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a Writ of Certiorari issue to review the judgment below.

OPINIONS BELOW

{X} For cases from Federal Courts

The opinion of the United States Court of Appeal appears at Appendix A to the petition and is

{X} is unpublished.

JURISDICTION

[X] For cases from federal court

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: January 14, 2005, and a copy of the order denying rehearing appears at Appendix A.

The jurisdiction of this court is invoked under 28 U.S.C. Section 1254

CONSTITUTIONAL AND STATUATORY PROVISIONS INVOLVED

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STATEMENT OF THE CASE

Petitioner is a forty-eight year old female, who is a native and citizen of Mexico. She was born on February 1, 1957. She entered the United States in December 1983 and has never left this country. She is married and has a twenty-five year old son, and an eighteen year old daughter. Petitioner and her son were subsequently placed in immigration proceedings because they had entered as visitors and subsequently fell out of status. They became subject to removal under Section 241 (a)(1)(B). In a hearing held on October 11, 1996, Petitioner requested relief in the form of Suspension of Deportation under Section 244 of the INA. Petitioner's son applied for the same relief and was granted Suspension of Deportation, but Petitioner was denied.

The Immigration Judge determined that the Petitioner met statutory eligibility for Suspension of Deportation relief. However he stated in his decision that this relief falls into the hands of the discretion of the Court and he chose not to extend this form of relief to the Petitioner.

The Immigration Judge exercised his discretion based on the fact that the Petitioner had filed her income tax returns as "Head of Household, when she should have filed as "Married filing Separately." and due to the fact she had received Medi-Cal benefits in 1994 for her child, which, INS Counsel instructed the Immigration Judge, would not allow him to grant Suspension of Deportation to the Petitioner.

The Immigration Judge did not allow the Petitioner an opportunity to rebut his decision and establish that she had not gained an economic advantage by filing as "Head of Household," and that she had repaid any Medi-Cal

benefits received. Additionally the Immigration Judge based his decision on unsubstantiated opinions expressed by Immigration Trial Counsel, and merely advised the Petitioner that she could "reopen her case if she chose."

The decision of the Immigration Judge was then appealed to the Board of Immigration Appeals on September 25, 1998. On July 25, 2002, the Board of Immigration Appeals affirmed the decision of the Immigration Judge without separate opinion.

Petitioner then filed a Petition For Review and Stay of Deportation with the Ninth Circuit Court of Appeal on August 26, 2002.

The Ninth Circuit Court of Appeals denied Petitioner's Motion on January 14, 2005.

The Petitioner now files her Petition for a Writ of Certiorari with the Supreme Court of the United States.

THE COURT OF APPEAL ERRED BY FAILING TO GRANT PETITIONER'S PETITION FOR REVIEW

Courts have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control. The Chinese Exclusion Case, 130 U.S. 581 (1889), Fong Yue Ting v. United States, 149 U.S. 698, (1893), Knauff v. Shaughnessy, 338 U.S. 537 (1950).

However it is also clear that aliens who have once passed through our gates, even illegally, may be expelled

only after proceedings conforming to the traditional standards of fairness encompassed in due process of law. The Japanese Immigrant Case, 189 U.S. 186 (1903); Woo Yan Sung v. McGrath, 339 U.S. 33, (1950), Kwong Hai Chew v. Colding 344 U.S. 590, 598, (1953),

In Wong Yang Sung v. McGrath, 339 U.S. 33, (1950), it is stated that "Our law may, and does place more restrictions on the alien then the citizen. But basic fairness in hearing procedure does not vary with the status of the accused. If the procedures used to judge the alien are fair and just, no good reason can be give why they should not be extended to simplify the condemnation of the citizens. If they would be unfair to citizens, we cannot defend fairness of them when applied to the more helpless alien. This is at the root of our holdings that the alien must be given a fair hearing to test an official claim that he is one of a deportable class."

The court in Shaughnessy v. Mezei, 345 U.S. 206 (1953) further elaborated, "The most scrupulous observance of due process, including the right to know a charge, to be confronted with the accuser, to cross-examine witnesses, and to produce evidence in one's own behalf, is especially necessary. The court stated both the old proceedings by which one may be bound to keep the peace, and the newer systems are safeguarded with full rights to judicial hearings for the accused. On the contrary, the Nazi regime in Germany installed a system of "protective custody" by which the arrested could claim no judicial or other hearing process. As a result the country was filled with concentration camps and summary detentions and deportations. Such practices once established with the best of intentions, will drift into the oppression of the disadvantaged in this country as surely as it has elsewhere. Differences in the process of

administration make all the difference between a reign of terror and one of law."

It is well-settled that the Fifth Amendment entitles an alien to due process of law in a removal proceedings. Reno v. Flores, 507 U.S. 292, 306, 123 L.Ed.2d, 1, 113 S. CT. (1993); also Felzcerek v. INS, 75 F. 3d 112, 115 (2nd Cir. 1996).

Herein the BIA failed to properly adjudicate the facts and legal issues before it with an opinion from the Court when the decision contained a legal or factual error which was material. 8CFR Section 3.1 (e)(4)(i) provides that certain requirements must be present in a case before the BIA may affirm an Immigration Judge's decision without opinion. The requirements specify that if there is no opinion issued, the results reached by the Immigration Judge must be correct, and any errors in the decision must be harmless or nonmaterial. Additionally the issues must either be squarely controlled by existing Board or federal court precedent and cannot involve the application of precedent to a novel fact situation, or the factual and legal issues raised on appeal must be "not so substantial that the case warrants the issuance of a written opinion in the case."

In the present case the decision of the Immigration Judge was incorrect because he based his decision on the tax expertise and legal theories and opinions of the Immigration Service, and utilized such opinion as adjudicative fact without providing the Petitioner with an opportunity for rebuttal. The Immigration Judge failed to take administrative notice of the Tax Code as well as any pertinent regulations applying to an individual who once received Medi-Cal benefits, but repaid these benefits to the state.

Cuadras v. INS, 910 F. 2d 567, 573, (9th Cir. 1990), establishes that an alien is entitled to the Fifth Amendment guaranty of due process, which is satisfied only by a "full and fair hearing."

In assuring that a fair hearing is provided, it is proper for the INS to take notice of certain facts, and give the petitioner an opportunity to respond. Ohio Bell, 301 U.S. at 306; Banks v. Schweiker, 654 F. 2d 637 (9th Cir. 1981). In Banks, the BIA erred because it did not allow the petitioners in that instance an opportunity to rebut the noticed facts. Therefore the fact that they could file a motion to reopen was not considered sufficient by way of their right to rebut.

The Immigration Judge officially noticed that Petitioner in this instance should initially have filed her tax return as part of a married couple, although the Petitioner explained that her husband did not work at that time. The Immigration Judge also came to the erroneous conclusion that the Petitioner "owed the IRS a substantial amount of money," although there was no evidence that she had received any additional benefit from filing as "Head of Household." Petitioner, on her own behalf, produced a letter from the INS that said no taxes were due on her behalf. Although the contents of this letter was described and discussed, the letter was not entered into the record as an exhibit.

Additionally the INS judge deferred to INS Trial Counsel, who informed the INS Judge that he did not have the option to grant relief to the Petitioner because she had received Medi-Cal benefits in the past.

Herein there was a clear abuse of discretion on the part of the Immigration Judge and this abuse could not be cured by filing a motion to reopen or appealing to the BIA. This became quite evident when the BIA affirmed the Immigration Judge's decision without opinion. The case of Romero-Morales v. INS, 25 F. 3d 125, 129 (9th Cir. 1994), established that the BIA is required to consider the record as a whole and to review all relevant evidence when deciding a motion to reopen.

Furthermore it is clear that the Petitioner in this matter has had her due process violated as well, in that the BIA dismissed the Petitioner's appeal. This dismissal shows that the BIA failed to make more than even a cursory review which amounts to colorable due process in this context. Larita-Martinez v. INS, 220 F. 3d 1092, 1095-96 (9th Cir. 2000).

Petitions for Review such as the one made by the Petitioner to the Ninth Circuit Court of Appeal are presently evaluated under the same standards employed by district courts in evaluating motions for preliminary injunctive relief. Lopez v Heckler, 713 F. 2d 1432, 1435, 463 U.S. 1328 (1983). In Lopez it is stated, "The petitioner must show either a probability of success on the merits and the possibility of irreparable injury, or that serious legal hardships are raised and the balance of hardships tips sharply in the petitioner's favor."

The case of Arthurs v. INS, 959 F 2d 142, 143-44 (9th Cir. 1992) further expands the standards for review by stating that, "These standards of review represent the outer extremes of the continuum, with the relative hardships to the parties providing the critical element in determining at what point on the continuum a stay pending review is justified."

During the evolution of the Immigration and Nationality Act, the case of Artukovoc v. Rison, 784 F 2d 1354, 1355, (9th Cir. 1986), added a further requirement that specified "that the petitioner is required to establish either a probability of success on the merits and the possibility of irreparable injury, or that serious legal questions are raised and the balance of the hardships tips sharply in petitioner's favor."

Therefore based on the above decisions it is entirely proper for the court herein to review the denial of Petitioner's Request For Review with the Ninth Circuit Court, because there is a high probability that she can prevail on the merits of her claim. .

REASONS FOR GRANTING THE WRIT

1. The Court of Appeal Erred In Upholding The Immigration Judge's Decision That Constituted An Abuse of Discretion

Former Section 244 of the INA, United States Code Section 1254 (a) (1) provides that, "The Attorney General, in his discretion, may cancel the deportation of an alien and adjust his status to that of an alien lawfully admitted for permanent residence. In the case of an alien who applies to the Attorney General for "Suspension of Deportation," the alien must demonstrate that he or she has continuously resided in the U.S. for at least seven years, possesses good moral character, and whose deportation would result in a hardship to the applicant or his or her parent or child, who is a U.S. citizen or resident of the United States."

It is the Petitioner's contention that the 9th Circuit Court of Appeals further erred in supporting the Immigration Judge's finding that the Petitioner did not establish that her American-citizen child would suffer hardship as required by the Act if she were removed from the United States.

"Many factors must be taken into consideration in making a determination of hardship. All factual data and relevant facts presented must be completely analyzed. Failure to consider any of the facts presented constitutes an abuse of discretion" "In making its determination, the court should look at: "age of the subjects, family ties in the U.S. and abroad; length of residency in the U.S. conditions of health, conditions in the country to which the alien is returnable, economic, political, and financial status, business and occupation, the possibility of other means of adjustment, whether of special assistance to the U.S. or the community, and immigration history. "In making this determination, relevant factors though not determinative in themselves, must be considered in the aggregate in determining whether extreme hardship exists." Salamenda v. INS, 70 F. 3d 447 (7th Cir. 1995).

In the Matter of Recinas, 23 I&N Dec. 467 (BIA 2002), The Board concluded that the Respondent in that case did establish "exceptional and unusual hardship. Herein the Respondent was a 39-year-old single mother of four U.S. citizen children. ages 12, 11, 18, and 5, and two minor respondents, ages 15, and 16. The Respondent in that instance had no close relatives in Mexico and her entire family lived in the United States. The Respondent was the sole support of her family and was self-employed. Additionally her children had spent their entire lives in the U.S. and did not speak Spanish.

The most significant factor about Recinas, is the fact that the Board stated that the "hardship standard was not so restrictive that only a handful of applicants, such as those who have a qualifying relative with a serious medical condition, will qualify for relief." The Board after engaging in a "cumulative analysis," found that the Lawful Permanent Resident parents of the Petitioner formed a "strong system of family support" which the children would lose if they were removed to Mexico.

Separation from family and children may be considered the most extreme form of hardship. Bastides v. Immigration and Naturalization Service. 609 F.2d 101 (1979), established that emotional issues must be considered factors in determining hardship. In that instance the court failed to recognize emotional hardship which would result from separation of the alien who expressed deep affection for his child, and who had been shown to have acted consistently with his expression of affection. Therein insufficient consideration was given to non-economic hardship which would result from the alien's deportation. Thus remand was required in this case.

Historically the court has ruled that family and relationships between family members occupies a place of central importance in our nation's history and are a fundamental part of the values that underlie our society. Moore v. City of East Cleveland, 431 U.S. 494, 97 S. Ct. 1932, 52 L. Ed. 2d 531 (1977).

Additionally the court in Urbano de Malaluan v. Immigration and Naturalization Service, 577 F. 2d 589 (9th Cir. 1978), reversed an order of the Board of Immigration Appeals denying a motion to reopen proceedings, emphasizing that the "separation of the petitioner from members of her family who are United

States citizens must be considered in conjunction with economic detriment in reaching the eligibility decision."

In Wang v. Immigration and Naturalization Service, 622 F.2d 1341 (1980), the court reasoned that the minor children of the Wangs , who have spent their whole lives in the United States, may suffer potential hardship if they were forced to leave this country. Accordingly the court held that the Board should not have summarily dismissed the Wang's claim of hardship to their children. It was held that the effect that the deportation of the parents would have on the Wang children should be determined only after a hearing.

In Ramirez-Gonzalea v. INS, 794 F. 2d 491 (9th Cir 1986), and in Carnalla-Munoz v. INS. 627, F 2d 1004 (9th Cir. 1980), the court recognized that "the most important single hardship factor may be the separation of the alien from the family living in the United States. It was further held in Prapavat v. INS, 662 F. 2d 561, 563 (9th Cir. 1981), that "Family unity is always an important consideration, " and "Failing to consider the cumulative effect of all relevant factors in a case can also be found to be an abuse of discretion."

Additionally when the Court fails to consider the impact of separation of the parent from the child that can amount to an abuse of discretion on its part. Reyes-Melendrez v. INS, --F. 3d—2003 WL 22053448, (9th Cir.Sep. 4, 2003).

The 9th Circuit Court of Appeal erred and abused its discretion in the case at hand, in supporting the position of the BIA, that the evidence presented by the Petitioner did not support her argument that her removal would cause hardship to her American citizen child.

The Petitioner's American-citizen child, Priscilla Zamora, age nineteen, merits special consideration because she has an on-going medical condition. Priscilla Zamora underwent a posterior spinal fusion with instrumentation on April 16, 2001. She is till in need of frequent follow-up consultations with x-rays in order to properly evaluate her healing. She is also in need of frequent pain medication and ongoing specific rehabilitation exercises which she must continue to attend. It is the opinion of her attending physician that she must remain in the U.S. near her primary surgeon, Dr. Richard Reynolds, so that her condition can be properly monitored. Petitioner wishes to keep her family together, but worries that she will be unable to find sufficient employment in Mexico and will be forced to work for below-poverty wages. Her primary concern is that her daughter, who is unable to work, will be denied appropriate medical care to monitor her medical progress and deal with her pain, because the appropriate medical care will be beyond her financial means.

The age of the Petitioner's daughter, Priscilla Zamora, in addition to her medical condition, plays an important part in determining whether she will suffer hardship and sustain damaging effects. Matter of Andazola, 23 I&N Dec. 319, 320, (BIA 2002), established that that if the ages of the American-citizen children make it difficult for them to adjust to life outside the United States, this factor will favor the petitioner's position.

Herein the Petitioner's daughter, Priscilla, is nineteen years old. Due to her need for physical care she would need to accompany her mother if the Petitioner is removed to Mexico. Priscilla will be deprived of the U.S. educational system, and will be denied medical treatment to follow-up her surgery. This is simply not acceptable for U.S. citizen children accustomed to their American way of

life, who have been educated in the U.S. educational system, learn in English, and who lack sufficient written communication skills in Spanish to maneuver their way around the system in Mexico. Priscilla will be deprived of her medical follow-up care which she has needed, and will continue to need, following her surgery.

Additionally Respondent believes that Priscilla's condition will worsen with the stress of the move, and the added complication that they will be unable to pay for needed medical services in Mexico. To promote proper healing, Priscilla needs to maintain a stress-free life and keep her follow-up medical appointments. Without adequate medical care, it is likely that Priscilla's condition will worsen and that she will be dependent on others for her care later in life. This is contrary to the present situation wherein the emphasis is on promoting independence and self-sufficiency. The psychological and economic trauma will be great and severe, enough to constitute hardship."

The case of Jara-Navarette v. INS, 813 F. 2d 1340, (9th Cir. 1986), strongly emphasized the point that the Court must examine every conceivable circumstance that may cause the United States citizen child of a respondent to suffer hardship due to his or her deportation. The Court stated, "In reviewing BIA decisions involving hardship to the United States citizen children, generalizing rather than individualized consideration and cursory treatment of individual circumstances constitute an abuse of discretion. Thus we have not hesitated to vacate denials of applications for suspension of deportation when the BIA abuses its discretion in examining hardship to United States citizen children." The failure of the Court to review and consider this evidence established that it did not act on evidence that was reasonable, substantial and probative.

Additionally courts in other than the Ninth Circuit have been vigilant in ensuring that the BIA gives individualized consideration to United States citizen children. In Ramos v. INS, 695 F. 2d 181 (5th Cir. 1983), the petitioners had two United States children, ages seven, and nine, at the time of the deportation hearing. The Court held that the BIA had not sufficiently examined how a child of a grammar school age might suffer from being uprooted from his life in the United States and remanded the case for further consideration.

The failure of the Court to review and consider this evidence established that it did not act on evidence that was reasonable, substantial and probative.

In this instance the 9th Circuit Court further erred by supporting the Immigration Judge's decision that removal of the Petitioner would not cause hardship to her daughter.

An abuse of discretion on the part of a reviewing Court must create a situation in which the abuse negatively and distinctly impacts the outcome of the case. Rejection of all evidence presented, without carefully analyzing all of it terminates an alien's ability to obtain a favorable outcome. If the Court without thoughtful review of the Board's decision allows the dismissal of all evidence presented, any apply alien can fail to meet the requisite standard for hardship. While the Court is vested with authority and discretion, it must be exercised wisely and in a manner that assures that aliens who are before it are able to receive a full and fair review of their cases. This is becoming more important since fewer and fewer forms of judicial review are available under the present immigration laws.

When strong evidence is presented and yet disregarded, this goes directly to the merits of the case and is clearly an incorrect decision. When there is no justification for rejection of evidence, an abuse of discretion is likely present.

Herein the conduct of the reviewing Court denotes the rise of a colorable constitutional claim. The Court found in Chavez-Murillo v. INS,1999 WL 728521 (9th Cir. 1999) that the Congressional intent to preclude judicial review of constitutional claims must be clearly evidenced. When the Board initially made a decision that the evidence presented was merely cumulative, it suggests that the Board failed to consider and evaluate the evidence in its entirety. This amounts to a failure of due process, raising an issue of a colorable constitutional claim. The Petitioner and her daughter would suffer extreme emotional as well as financial hardship if Petitioner was forced to return to Mexico.

2. The Court of Appeal Erred In Failing To Address The Fact That Petitioner's Case Was Not Reviewed By A Three Member Panel

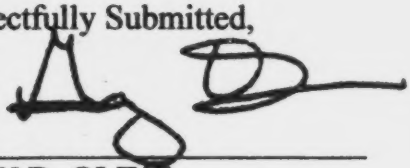
Under recent immigration reform regulations, 67 Fed. Reg. 54, 878, 54, 905 (August 26, 2002), the Petitioner was entitled to have her case reviewed by a Three Member Panel, because there is a need to establish precedent construing the meaning of the regulations, and the need to resolve a case or controversy of major national importance. This review was denied to her and the controversy over the meaning of the regulation applied in denying her case has yet to be resolved.

CONCLUSION

Petitioner, through her counsel, contends that the Ninth Circuit Court of Appeals erred in denying her Petition for Review and that this denial was manifestly contrary to law. Based upon the aforementioned, Petitioner respectfully requests that this Honorable Court grant the Writ of Certiorari, and permit her case to be reopened and remanded so that she can present her application for relief from removal before the Immigration Court.

Dated: March 10, 2005

Respectfully Submitted,



GARY D. OLIVE,
Attorney at Law

FILED
Jan 14 2005
CATHY A. CATTERSON,
CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GUADALUPE MADRID. Petitioner, v. JOHN ASHCROFT, Attorney General, Respondent.	No. 02-72740 INS Nos. A74-800-385 **JUDGMENT**

Upon Petition for Review of a Decision of the Board of Immigration Appeals

This cause came on to be heard on the Transcript of the Record from the Immigration and naturalization Service and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this court that the petition for review of the said decision of the Board of Immigration Appeals in this cause be, and hereby is **DENIED** in part, **DISMISSED** in part.

Filed and entered Friday, January 14, 2005.

APPENDIX A

U.S. Department of Justice Decision of the Board of Immigration Appeals
Executive Office of Immigration Review

Falls Church, Virginia 22041

Date: JUL 25 2002

File: A74-800-385 Los Angeles

In re: MADRID, GUADALUPE

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Noemi G. Ramirez
ON BEHALF OF SERVICE: Elena Kusky

ORDER:

PER CURIAM. The Board affirms, without opinion, the results of the decision below. The decision below is, therefore, the final agency determination. *See* 8 C.F.R. Section 3.1 (a) (7).

FURTHER ORDER: Pursuant to the Immigration Judge's Order and in accordance with our decision in *Matter of Chouliaris, 16 I&N Dec. 168 (BIA 1977), the* alien is permitted to depart from the United States voluntarily within 30 days from the date of this order or any extension beyond that time as may be granted by the district director, and in the event of the failure to depart, the alien shall be deported as provided in the Immigration Judge's order.

"s/_____"
FOR THE BOARD

APPENDIX B

FILED
Mar 01 2005
CATHY A. CATTERSON,
CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GUADALUP MADRID Petitioner, v. ALBERTO GONZALES, Attorney General, Respondent.	No. 02-72740 INS Nos. A74-800-385 ORDER

Before: BEEZER, HALL and SILVERMAN, Circuit Judges,

Madrid's motion to stay the mandate is denied.

*** Alberto Gonzales is substituted for his predecessor, John Ashcroft, as Attorney General of the United States, pursuant to Fed. R. App. P. 43©(2).**

APPENDIX C

INA
Section 241 (a)(1)

An alien is in violation of Section 241 (a)(1) , if at the time of his entry, he was an immigrant not in possession of a valid immigration visa, and not exempted from the presentation thereof by said Act or regulations made thereunder.

APPENDIX D

INA
Section 244 (b)(2)
Suspension of Deportation may be granted to an alien if (1) the applicant has been physically present in the United States for a continuous period of at least seven years. (2) the applicant has been and is a person of good moral character, and (3) "deportation would, in the opinion of the Attorney General, result in extreme hardship" to the applicant or to a spouse, parent, or child who is a citizen of the United States or permanent resident alien.

APPENDIX E

67 Fed. Reg. 54, 878, 54 905 (August 26, 2002)

Single-Member Review and New Criteria for three-Member Panel Review

Single member review is mandated for all cases except those falling within one of the five enumerated categories: Those five categories include cases in which there is a need to: (1) settle inconsistencies in the rulings of IJ's. (2) clarigfy ambigueous laws, regulations or procedures; (3) correct an IJ's decision that does not comport with the law; (4) resolve a case or controversy of "major national importance," or (5) correct a clearly erroneous factual determination by an IJ. Cases falling within one of these categories will be adjudicated by a three-Member panel.

APPENDIX F

PACIFIC HEALTH CENTER 2103 N. Broadway
Carlos T. Garcia D.C. Santa Ana, CA 92706

(714) 550-7701

February 10, 2005

RE: ZAMORA, PRISCILLA
DOB: 08/28/1986

To Whom It May Concern:

The above captioned patient was evaluated at my office today for the purpose of determining possible care and prognosis for the future as well.

The patient presented herself with complaints of slight to moderate back pain occurring intermittently, becoming moderate at times, proportional to increased and/or prolonged physical activities. She gives a history of back surgery for scoliosis correction at the Orthopedic Center in Children's Hospital of Los Angeles. Review of records by Dr. Richard Reynolds, her orthopedic surgeon, indicates that she underwent a posterior spinal fusion with instrumentation on April 16, 2001. She mentions that she has to call her doctor's office for prescription for pain due to flare-ups of pain.
Dr. Reynolds indicated that Priscilla is in need of frequent follow-up consultations with x-rays in order to properly monitor her healing. She is also in need of ongoing specific rehabilitation exercises which she must continue to attend.

APPENDIX G

The patient has indicated that she may need to leave the country for an extended period of time. After careful review of this patient's condition, it is my opinion that Priscilla must remain in the U.S., especially near her primary surgeon, Dr. Richard Reynolds, so that her condition can be properly monitored.

These type of surgical correction at such a young age are quite delicate and I feel that she must remain under the supervision of her surgeon for several years to come.

Should you have any questions regarding this patient, feel free to call this office.

Sincerely,

"s/_____"
Carlos T. Garcia, D.C. C. C. S. T.
Certified in Spinal Trauma
PACIFIC HEALTH CENTER, SANTA ANA

APPENDIX G

(2)

Supreme Court, U.S.
FILED

No. 04-1443 APR 1 - 2005

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

GUADALUPE MADRID
Petitioner
v.

ALBERTO GONZALES ATTORNEY GENERAL
Respondent

On Petition or a Writ of Certiorari To The United States Court of Appeals For The Ninth Circuit

USCA No. 02-72740
Agency No. A74 800 385

SUPPLEMENTAL APPENDIX

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UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
Los Angeles, California

August 27, 1998

File A 74 800 385

In the Matter of

GUADALUPE MADRID
Respondent

IN DEPORTATION
PROCEEDINGS

CHARGE: Section 241 (a) (1) (B)
entering without inspection

APPLICATION: Suspension of
deportation

ON BEHALF OF
GOVERNMENT:

IN BEHALF OF RESPONDENT:

Elena Kusky,
Esquire

Jesse Esparza

ORAL DECISION OF THE
IMMIGRATION JUDGE

The respondents are a mother and son, mother age 40, son, young teenager, both natives and citizens of the country of Mexico. The respondents entered the United States without inspection by an Immigration Officer on November 8, 1983, at San Ysidro, California. At a Master Calendar hearing held before the Immigration Judge on

January 10, 1977, the respondents admitted the factual allegations, except that they denied being inspected. However, regardless, there was a concession that they were in violation of Section 241 (a) (1) (B), having fallen out of status. So, regardless, the Court finds that they are both deportable by clear, convincing and unequivocal evidence.

For relief, the respondents have asked this Court to suspend their deportation, and alternatively that they should be accorded the right to depart the United States voluntarily.

In order to prevail in the suspension application, the respondents must show that they have lived in the United States continuously for seven years, that they possess good moral character, and that they would suffer extreme hardship if they were to be asked to return to Mexico.

The Court has received, actually, two applications for suspension of deportation, one for the son, and one for the mother. The son entered the United States at three years and is now seventeen, he has no children, he has no qualifying relative within the meaning of suspension, a Statute 244. He has a sister in the United States, who is a U.S. citizen, he has lived here his entire life, he speaks fluent English, at the time of his particular merit's hearing, was a junior in high school. The young man has not been arrested, the young man does not in fact speak Spanish and he has hopes to involve himself in law enforcement, if he is able to stay in the United States. Respondent's father is somewhat estranged and lives with the family at various times, his father indicates that he wants to go to Mexico.

He testified himself, he has a fairly good B average, 2.5, he has been involved in the orchestra, retail

marketing, he would like to be in the military, he would like to go to college, he has taken the Marine test, he has scored 79, with the average of 65. When asked why he could not involve himself in the military in Mexico and he correctly answered that because of the corruption that is present in the Mexican military.

On balance, pursuant to the Matter of O-J-O specifically, regardless of his mother's case the Court would find that it would constitute extreme hardship for this gentleman to be asked to return to Mexico on the basis of his clearly established life here, time here, and what he has done, what he hopes to do, I find that it would be hurtful to him in an extreme way, if he were to return and therefore, I will grant his case on a conditional basis, pursuant to the numbers being available, with an alternative order of voluntary departure for 120 days, should he not comply, and a further order of deportation, should he be deemed ineligible on the original charge.

With regard to the mother's, or the woman's, Ms. Madrid's obligation, she presently is age 40, entered at age 27, or 28, she has had these proceedings interpreted to her in the Spanish language. She entered the United States with her visa, according to her testimony, she never left, she was married, her husband has been here already, he has been illegal throughout these proceedings. They also have a daughter, Priscilla, who is born in 1986 which would make her 12 years old. The daughter is currently going to school, the daughter is acculturated in the United States havi8ng lived here her entire life.

The female respondent has not worked in the past, she has received public assistance, an issue which I will discuss momentarily. She is currently employed at a preschool, known as Playmates, she has worked there for five years, where she helps with babies, earns $225.00 a week, she also works at Dell Taco. The household is

receiving $2,200.00 monthly, however it does not look like this is the case now because the husband is no longer with them or has indicated that, at least, he wishes to return to Mexico.

The female respondent indicates that she is not really involved very much with the community as she is a single parent, working, she does go to church, same church for ten years. She has her parents in Mexico, she has ten siblings, all of whom live in Mexico, they all enjoy good health. When asked with regard to what hardship she would suggest, that she mentioned her son, but he has been taken out of the equation. She mentioned her daughter, and she said that the jobs are "tough" with not many opportunities.

The issues in this case revolve around tax returns that were filed and the welfare. With regard to the tax returns, the respondent filed as head of household, apparently she was not eligible to do so because her husband was living with her and therefore, she has received money that was no hers. Second issue is that she has received welfare and the Government contends that it would be abusive judicial discretion to allow her to stay in the United States after receiving public assistance for seven years that she lived in the United States. These points were made at the last hearing, a few months ago, the respondent has only provided a letter from the County of Los Angeles that affirms that she has been on public assistance but it has not affirmed that she is paying it back. She has not, also, paid back any of the tax money.

I do not find that the respondent is statutorily warrant on the issue of good moral character because of the payment of taxes and the public assistance. I feel that this weighs in the demand judicial discretion. Without any other concept, I would find that it would not be an extreme hardship for the female respondent herself, if she

were asked to go to Mexico. She is not necessarily acculturated herself here, as she has abused her time in the United States with regards to receiving these benefits. But there are other factors that must be considered as well. One factor is that she was living with a man who is not responsible, apparently, according to the meek documentation that we have received on this issue and the testimony that seems sometimes somewhat contradictory, especially with regard to the taxes and the amount of time that he has actually lived in the home. We also have, indeed, a single mother who has a child in high school and one who should be about entering junior high school at the present time. With regard to the U.S. citizen child, the Court would find extreme hardship with regard to her, if the mother was asked to go back to Mexico, because of her age, the amount of time she has lived here and so forth and so on. Having found then that the respondent is statutorily eligible, the case falls into the hands of the discretion of the Court.

With regard to the discretion of the Court, the Court must weigh all factors, the Court is extremely displeased with the respondent, that she has not seemed to take the proceedings seriously enough to either seek advice of her own counsel to seek the advice of what this Court has offered her in rectifying the tax situation and the public assistance situation. The Court is further not certain of the female respondent has been as candid with the Court as possible with regard to the dates that her husband has been wit her and with regard to the other factors. The benefit of being able to stay in the United States is one that is not taken lightly either by this Court or by the Law as a while. To grant this female respondent's case is to validate her living in the United States and abusing the tax system and abusing the system of public support. To deny relief to this woman, then, would as I have said, would cause extreme hardship to both of her children. However, in balancing both of these

factors, the Court cannot validate the behavior that she has had in the past with regard to the taxes and with regard to the public assistance, especially due to the fact, that she has been given ample opportunity to rectify it, and has given this Court no answer whatsoever as to why it is that she has not done so. It is on that basis and on that basis alone that the discretion of this Court in balancing all the factors will not grant her application for suspension of deportation. The following orders are hereby issued.

ORDER

II IS HEREBY ORDERED that the male respondent's, Elizandro Zamora Madrid, A74 800 384, application for suspension of deportation is conditionally granted as I mentioned in my decision orally.

IT IS FURTHER ORDERED that the respondent's Guadalupe Madrid, A 74 800 385, application for suspension of deportation is denied. She will be granted the privilege of voluntary departure until January 1,1999, with alternative order of deportation to Mexico should she not comply. It is so ordered.

"s/_____"
RICHARD D. WALTON
Immigration Judge

A 74 800 385 August 27, 1998